

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

MARCIA J. FUCHSBERG AUSTER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3157

Decision No. CU-3962

AMENDED PROPOSED DECISION

This claim was based on the asserted loss of realty in Cuba and was denied by the Commission by Proposed Decision issued October 1, 1969, inasmuch as the evidence of record was insufficient to establish the claim.

Since that time claimant has clarified the basis for the affidavits of record and submitted additional evidence. Additional clarification is also of record in Claim No. CU-3348 (Claim of Meyer Fuchsberg, claimant's father). Accordingly, the Proposed Decision is amended.

The Commission now finds that in April 1958 claimant received as a gift from her grandfather, Max Pincus, a plot of land measuring approximately thirty-eight by nineteen meters, and known as Parcel R, Manzana 45, Barrio Bacuranao, Reparto Santa Maria del Mar, Guanabacoa, Havana, Cuba.

On December 6, 1961, the Government of Cuba published Law 989 in its Official Gazette, which effected a confiscation of all goods, property rights, shares, bank accounts and other securities of persons who left Cuba. The Commission finds that this law applied to claimant herein and in the absence of evidence to the contrary that her real property was taken on December 6, 1961. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Further, the Commission finds on the basis of the record that the value of this plot on the date of loss was \$7,220, and holds that claimant suffered a loss in that amount within the meaning of Title V of the Act.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

Accordingly, the following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

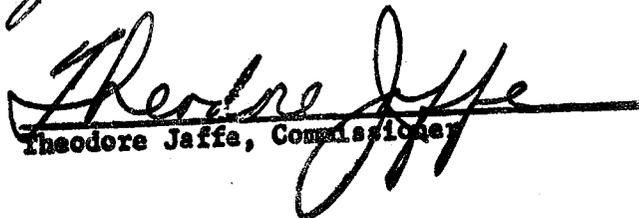
CERTIFICATION OF LOSS

The Commission certifies that MARCIA J. FUCHSBERG AUSTER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seven Thousand Two Hundred Twenty Dollars (\$7,220.00) with interest at 6% per annum from December 6, 1961 to the date of settlement.

Dated at Washington, D. C., and entered as the Amended Proposed Decision of the Commission

FEB 3 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended (1970).)

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3962

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$7,220.00, was presented by MARCIA J. FUCHSBERG and is based upon the asserted loss of real property in Havana, Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts that her grandfather, a Cuban citizen, purchased the realty in question in 1956 or 1957 for \$7,220.00; and thereafter gave it to her and placed the title in her name. The date of the gift is not furnished. She states that the property was taken by the Cuban Government in 1960 or 1961.

By Commission letter of July 6, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. As no reply was received, a "follow-up" was sent on August 30, 1967.

Claimant has submitted copies of four affidavits each of which contains a statement that claimant was the owner of the realty in question and that it cost \$7,220.00. None of these affidavits includes any information on which these statements were based. Moreover two reports from abroad state that a search of the appropriate Property Registry failed to disclose claimant as owner of the realty in question.

In view of the above, the Commission finds that the evidence submitted is of insufficient probative value to establish this claim, and that therefore claimant has not met the burden of proof in that she has failed to establish ownership of rights and interest in property which was nationalized expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D.C.,
and entered as the Proposed
Decision of the Commission

OCT 1 1969

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU-3157